



LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 201

[Docket No. RM 2011–6]

Designation of Agent To Receive Notification of Claimed Infringement

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: Under the Digital Millennium Copyright Act (“DMCA”), the U.S. Copyright Office is required to maintain a current directory of agents that have been designated by online service providers to receive notifications of claimed infringement. Since the DMCA’s enactment in 1998, online service providers have used a paper form to designate agents with the Copyright Office, and the Office has made scanned copies of those paper forms available to the public by posting them on the Office’s website. In 2011, the Copyright Office issued a notice proposing updated regulations governing the designation of agents under the DMCA in anticipation of the creation of a new online system through which service providers could more efficiently designate agents with the Copyright Office and the public could more easily search for such agents. With the development of this electronic system approaching completion, this notice proposes an amendment of the Office’s regulations to lower the fee for designating an agent under the DMCA.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting comments are available on the Copyright Office website at <http://www.copyright.gov/rulemaking/onlinesp/NPR>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Jacqueline C. Charlesworth, General Counsel and Associate Register of Copyrights, by email at jcharlesworth@loc.gov, Sarang V. Damle, Deputy General Counsel, by email at sdam@loc.gov, or Jason E. Sloan, Attorney-Advisor, by email at jslo@loc.gov. Each can be contacted by telephone by calling 202-707-8350.

SUPPLEMENTARY INFORMATION:

I. Background

In 1998, Congress enacted section 512 of title 17, United States Code, as part of the DMCA.¹ Among other things, section 512 provides safe harbors from copyright infringement liability for online service providers engaged in specified activities and that meet certain eligibility requirements.² A service provider seeking to avail itself of the safe harbor in section 512(c) (for storage of material at the direction of a user) is required to designate an agent to receive notifications of claimed copyright infringement by making contact information for the agent available through its service, including on its website in

¹ Pub. L. No. 105–304, 112 Stat. 2860 (1998).

² See 17 U.S.C. 512.

a location accessible to the public, and by providing such contact information to the Copyright Office.³ Although the requirement to designate an agent to receive notifications of claimed infringement is detailed in subsection 512(c), the safe harbors in subsections 512(b) (for system caching) and (d) (for information location tools), incorporate the notice provisions of section 512(c)(3), which in turn require that notices be sent to “the designated agent of a service provider.”⁴ For its part, the Copyright Office is required to maintain a current online directory of designated agents that is available to the public, and is authorized to require payment of a fee by service providers to cover the costs of maintaining the system.⁵

Because the DMCA was effective on its date of enactment and a procedure to enable the designation of agents needed to be in place immediately, the Copyright Office issued, without opportunity for comment, interim regulations governing the designation of agents to receive notifications of claimed infringement.⁶ Those interim regulations, which are still in effect today, require service providers to submit a paper form to the Copyright Office setting forth the requisite information for the designated agent.⁷ The Copyright Office then scans the forms and posts them on its website.⁸

In an effort to update the existing system, the Office issued a notice of proposed rulemaking (“NPRM”) on September 28, 2011, describing the Office’s proposal for a new electronic system through which service providers could more efficiently designate agents with the Copyright Office and the public could more easily search for such agents

³ *Id.* at 512(c)(2).

⁴ *See id.* at 512(b)(2)(E), (d)(3).

⁵ *Id.* at 512(c)(2).

⁶ *See* 63 FR 59233 (Nov. 3, 1998).

⁷ *See* 37 CFR 201.38.

⁸ *See* <http://www.copyright.gov/onlinesp/>.

in the online directory.⁹ The NPRM sought public comment on proposed rules that would govern the submission and updating of information relating to designated agents under such a system.¹⁰ The NPRM also explained that the Office would establish new fees to file, renew,¹¹ or amend the designation of an agent, and that it would publish a notice of proposed rulemaking to seek comments on the proposed fees.¹²

Following the 2011 NPRM, the Library of Congress commenced the software development effort. Although it appeared at that time that the Library would be able to commit the necessary resources to complete development of the system without significant delay, as it turned out, the Library was unable to supply the requisite resources until fairly recently. With the new electronic system now nearing completion, the Office seeks public comment on proposed fees to use it.

II. Discussion

Section 512(c)(2) of title 17 authorizes the Register of Copyrights to “require payment of a fee by service providers to cover the costs” of maintaining a directory of agents designated to receive notifications of claimed infringement.”¹³ In addition, section 708(a) of title 17 more generally authorizes the Register to fix fees for certain Office services, including the electronic directory, based on the cost of providing the service.¹⁴

⁹ See 76 FR 59953 (Sept. 28, 2011).

¹⁰ *Id.*

¹¹ In the NPRM, the Office explained that the proposed system would require service providers to periodically “validate” the designated agent information with the Copyright Office, to ensure that the information in the Office’s directory would remain current and accurate. See *id.* at 59954-55. To avoid confusion and better reflect the actual operation of the anticipated electronic system, the Office will refer to this process as the “renewal” of the designation rather than the “validation” of the designation.

¹² *Id.* at 59956, 59959-60.

¹³ 17 U.S.C. 512(c)(2).

¹⁴ See *id.* at 708(a) (“The Register is authorized to fix fees for other services [not enumerated in section 708(a)(1)-(9)] based on the cost of providing the service.”).

Currently, the fee for a service provider to designate an agent with the Office, or amend a designation, is \$105, plus an additional fee of \$35 for each group of 1 to 10 alternate names used by the service provider.¹⁵ This fee reflects the cost to the Office of receiving, reviewing, scanning, and posting the paper forms submitted by service providers, a largely manual process. Based on an analysis of the cost of operating and maintaining the new electronic system, the Office believes that the fee to designate an agent to receive a notification of claimed infringement can be much lower, and should be established at six dollars per designation—whether a new designation, a renewed designation, or an amended designation. At this time, the Office does not believe that an additional fee to include alternate names with a designation to be warranted, as the Office does not currently foresee appreciable additional costs due to the submission of alternate names through the online process.

This significantly lower proposed fee reflects the far greater efficiency of the electronic system for the Copyright Office. The Office arrived at the six dollar amount by considering the total personnel costs associated with administering and maintaining the new service, spread across the anticipated volume of designations. The Office expects that ongoing support for any operational system will require Copyright Office staff to monitor, evaluate, and address issues that may arise with the system, as well as the portions of the Office’s website that will integrate with the system, as needed. Additionally, support will be needed to respond to any user concerns that may arise, as well as to manage payments received. Based on the cost of employee time spent on these tasks (including salary and benefits), the Office calculates the total costs to be

¹⁵ 37 CFR 201.3(c)(17).

approximately \$41,000 per year.¹⁶ With respect to the anticipated number of designations that will be filed, the Office notes that 23,300 designations have been filed since 1998 and are included in the existing directory.¹⁷ While it is difficult to know how many remain active, undoubtedly a significant portion—for present purposes, the Office is estimating 75% to 85%—represent service providers that continue to operate. In addition, the Office expects a certain number of new and amended designations to be filed in the coming years. In total, the Office estimates an average of 7,000 designations to be filed per year.¹⁸ Should experience with the system suggest that the anticipated personnel and overhead expenses or estimated volume of designations is incorrect, the Office will revisit the fee.

At this time, the Office is soliciting comments only on the fee for the new system. Accordingly, comments in response to this notice should be directed solely to the appropriateness of the proposed fee.¹⁹

List of Subjects in 37 CFR Part 201

Copyright.

Proposed Regulation

¹⁶ It is anticipated that the Office will not need to maintain the system's IT infrastructure from a technical standpoint because the Library currently provides these services to the Office. If the Library begins charging for these services, or if the Office takes over these IT functions in the future, the fee may need to be reevaluated.

¹⁷ The number of listings appears higher in the current DMCA directory because each alternate name in a designation is listed separately, even though each such listing links to a single designation filing.

¹⁸ These calculations assume that active existing designations will need to be refiled electronically in the new system. The calculations also anticipate that to keep the directory up to date, designations will be renewable on a three-year basis.

¹⁹ The Office, in its prior notice, previously asked for and received comments on the design and operation of the electronic system. Those comments will be separately reviewed and discussed in conjunction with the final rule that will govern the system.

In consideration of the foregoing, the Copyright Office proposes to amend 37 CFR part 201 as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Revise entry (17) in the table to § 201.3(c) to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

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(c) * * *

							Fees
Registration, recordation and related services							(\$)
<p>(17) Designation of agent under § 512(c)(2) to receive notification of claimed infringements, including renewal or amendment of designation</p>							6
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Dated: May 19, 2016.

Jacqueline C. Charlesworth,
General Counsel and Associate Register of Copyrights

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